

ciary'. He then concluded in these terms: 'In order to avoid further allegations from being made, it is my firm belief that the said matters be heard by a High Court. Further, bearing in mind the grave consequences to me as an NCMP and professional person in addition to the possibility of a custodial sentence I believe this case involves matters of public interest.' It appeared to me that it was fashionable to make scurrilous allegations of this kind. The law must take its course. The real question was whether this court would fairly and legitimately treat politicians who were charged differently from accused persons who were not politicians. As was held by the Court of Criminal Appeal in *Wong Hong Toy & Anor v PP*² at p 339: 'It is beyond question that all accused persons should be treated equally regardless of status.'

The final ground of the applicant as contained in para 40 of the applicant's affidavit was that if he was tried in the High Court and convicted he would have a further recourse to the Judicial Committee of the Privy Council. This ground was rejected by the Court of Criminal Appeal in *Wong Hong Toy & Anor v PP*² for the reasons they gave and I need not repeat them in this judgment.

The criminal motion was accordingly dismissed.

Application dismissed.

Solicitors: *Ann Tan & Associates.*

Reported by *Zarinah Marican*

Jeyaretnam JB v Public Prosecutor

HIGH COURT (SINGAPORE) — CRIMINAL MOTION NO 62
OF 1989
CHAN SEK KEONG J
8 JUNE 1990

Criminal Procedure — Questions of law of public interest — Fundamental rights — Freedom of speech — Supreme Court of Judicature Act (Cap 322, 1985 Ed), s 60

Criminal Law — Providing public entertainment without a licence — Public Entertainments Act (Cap 257, 1985 Ed), s 18(1)(a)

The applicant was convicted and fined \$3,500 by the district court for having provided public entertainment without a licence, contrary to s 18(1)(a) of the Public Entertainments Act (Cap 257, 1985 Ed). His appeal against conviction was dismissed while the fine was reduced to \$1,500. He then applied by way of criminal motion to have certain questions of law referred for decision to the Court of Criminal Appeal on the ground that they were of public interest, pursuant to s 60 of the Supreme Court of Judicature Act (Cap 322, 1985 Ed). The questions of law which the appellant sought to have referred to the Court of Criminal Appeal were:

- A (1) Whether on the evidence adduced by the prosecution in Police Summons No 0068 of 1987, the speech of the appellant at the opening of the Workers' Party's premises constituted 'public entertainment' within the meaning and scope of that term as defined in the Public Entertainments Act.
- (2) Whether the purported decision of the public entertainments licensing officer to refuse the Workers' Party a licence was a nullity for the following reasons:

- B (i) that the grounds for the refusal were not shown to be grounds upon which a licence may be lawfully refused under the Constitution, and the refusal in consequence was a violation of art 14(1) of the Constitution which secured the right of the appellant to free speech;
- (ii) the refusal was not the decision of the officer to whom Parliament had delegated the decision on applications under the Act.

- C (3) Where the public entertainments licensing officer denies a licence under the Public Entertainments Act in violation of art 14(1) of the Constitution, whether the applicant to whom the licence is so denied commits any offence if he exercises his constitutional right to freedom of speech on the occasion for which the licence was sought and wrongfully denied.

The applicant contended that all his questions were serious questions of law on which his conviction for a grave offence depended, and accordingly they were questions of public interest.

- E Held, dismissing the application:

(1) The offence in respect of which this application was made was not a grave offence. The offence does not imply a lack of honesty or integrity or any of the qualities that make ordinary persons shun the company of the offender. If the gravity of the offence was a pre-condition for the exercise of the court's power under s 60, this application would have failed on this ground only.

- F (2) In general, any question which raised constitutional rights would be one of public interest which ought to be decided, whenever appropriate. However in this case, the applicant's questions did not raise constitutional issues.

- G (3) Question (1) as to whether the making of a speech to a gathering in a public place to which all members of the public have unrestricted access constituted public entertainment within the meaning of that expression in the Act was really a question of fact once it was determined as a matter of statutory construction that a speech made to such a gathering was an address. Section 2 of the Act defined 'public entertainment' to include an address. There was no doubt that the appellant 'addressed' the gathering. Accordingly this question was substantially one of fact rather than of law, the question being whether the appellant did address the gathering.

- H (4) Question 2(i) assumes that the grounds for the refusal of the application for a licence were not within the grounds specified in the Constitution. The fact was that no reason was given by the licensing officer for refusing the licence nor did the applicant request him to give reasons. Accordingly there was no factual foundation on which this question of law could be raised, assuming it was one of public interest. The applicant's failure to challenge the constitutional validity of the Public Entertainments Act or the scheme of licensing prescribed thereunder meant that the Public Entertainments Act was law which Parliament was by art 14(2) authorized to enact for the purpose of imposing on the right to freedom of speech and expression conferred by art 14(1) such restrictions as it

considered necessary or expedient for any of the purposes enumerated in the article. A

(5) As to question 2(ii), there was no evidence that the licensing officer delegated his function to another person, and even if he had done so, it would clearly not raise a constitutional question but one of administrative law.

(6) Question (3) also had no factual foundation for it to be raised. To that extent it was a hypothetical question. B

Cases referred to

- 1 *Jeyaretnam v Law Society of Singapore* [1988] 3 MLJ 425 (distd)
- 2 *Abdul Salam bin Mohamed Salleh v PP* [1990] 3 MLJ 275 (folld)
- 3 *CCSU v Minister for the Civil Service* [1985] AC 374 (refd)

Legislation referred to

Constitution of the Republic of Singapore art 14 (1)
Public Entertainments Act (Cap 257, 1985 Ed) s 18(1)(a)
Supreme Court of Judicature Act (Cap 322, 1985 Ed) s 60

The appellant in person.

Sowaran Singh for the Public Prosecutor.

Cur Ado Vult

Chan Sek Keong J: This is an application by the appellant in MA No 205 of 1988 pursuant to s 60 of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) ('the SCJA') for certain questions of law to be referred for decision by the Court of Criminal Appeal on the ground that they were of public interest. At the conclusion of the hearing of this application, I dismissed the application and said I would give my reasons later.

The appellant was convicted and fined \$3,500 by the district court on the charge of having on 10 January 1987 provided public entertainment without a licence, an offence under s 18(1)(a) of the Public Entertainments Act (Cap 257, 1985 Ed) ('the Act'). The nature of the entertainment was in the form of a speech which he made at a public gathering at the five-foot way at No 80 Boat Quay which was a public place. He appealed against the conviction and sentence. On 10 October 1989, I dismissed the appeal against conviction and reduced the fine to \$1,500 (see [1990] 1 MLJ 129).

The questions of law which the appellant sought to have referred to the Court of Criminal Appeal were as follows:

- (1) Whether on the evidence adduced by the prosecution in Police Summons No 0068 of 1987 the speech of the appellant at the opening of the Workers' Party's premises constituted 'public entertainment' within the meaning and scope of that term as defined in the Public Entertainments Act.
- (2) Whether the purported decision of the public entertainments licensing officer to refuse the Workers' Party a licence for the aforesaid function was a nullity for the following reasons:
 - (i) that the grounds for the refusal were not shown to be grounds upon which a licence may be lawfully

refused under the Constitution and the refusal in consequence was a violation of art 14(1) of the Constitution which secured the right of the appellant to free speech;

- (ii) the refusal was not the decision of the officer to whom Parliament had delegated the decision on applications under the said Act.

- (3) Where the public entertainments licensing officer denies a licence under the Public Entertainments Act in violation of the Constitution and specifically art 14(1) thereof whether the applicant to whom the licence is so denied commits any offence if he exercises his constitutional right to freedom of speech on the occasion for which the licence was sought and wrongfully denied. C

Section 60 of the SCJA provides as follows:

(1) When an appeal from a decision of a subordinate court in a criminal matter has been determined by the High Court, the Judge may on the application of any party and shall on the application of the Public Prosecutor reserve for the decision of the Court of Criminal Appeal any question of law of public interest which has arisen in the course of the appeal and the determination of which by the Judge has affected the event of the appeal. D

(5) For the purposes of this section but without prejudice to the generality of its provisions - E

- (a) any question of law regarding which there is a conflict of judicial authority shall be deemed to be a question of public interest; and
- (b) the reservation of a question of law for the consideration of the High Court under the provisions of any written law relating to criminal procedure or the exercise by the High Court of any power of revision under any such written law shall be deemed to be an appeal from a decision of a subordinate court in a criminal matter. F

The appellant contended that the questions were serious questions of law which had never before been raised in the High Court and that they raised constitutional issues of freedom of speech, and for those reasons they were of public interest. Counsel relied on the observations of the Privy Council in *Jeyaretnam v Law Society of Singapore*¹ on what is a question of public interest under s 60 of the SCJA. In that case, their Lordships said: G

The conviction of the appellant on the accounts charge depends on a construction of s 199 of the Penal Code first propounded by the Chief Justice sitting as a single judge and later adopted by Judge Foenander and Lai Kew Chai J, which is attacked as bad in law. The convictions on the \$2,000 and \$200 cheque charges depend on findings of fact by the Chief Justice reversing the primary findings of the trial judge on grounds which are attacked as bad in law. The affirmation by the Chief Justice of the conviction by Judge Khoo of the \$400 cheque charge is attacked as bad in law. The appellant has had no opportunity to test any of the questions of law which he claims are involved by appeal to the Court of Criminal Appeal of Singapore or, if necessary, by further appeal to the Board, because the Chief Justice and Lai Kew Chai J refused to reserve any questions of law pursuant to s 60 of the Supreme Court of Judicature Act and, in the absence of such reserva- H

tion, neither the Court of Criminal Appeal nor the Board had any jurisdiction to entertain any appeal. If it can be shown that there were questions of law of public interest which should have been reserved for decision by the Court of Criminal Appeal and that this would have led to the quashing of the convictions either by the Court of Criminal Appeal or on appeal by the Board, it must surely be appropriate, to quote Lord Simon's words 'that the conviction(s) should not be conclusive against the accused in the course of disciplinary proceedings, the object of which themselves is, after all, to promote justice'.

Their Lordships have from the outset entertained no doubt that these convictions do indeed raise serious questions of law and they find it difficult to understand how any serious question of law arising in a criminal case on which a person's conviction of a grave offence may depend can be said not to be 'of public interest' within the meaning of s 60(1) of the Supreme Court of Judicature Act. In the end, therefore, the determination of the appeal turns on the question whether the convictions are vitiated by errors of law.

In reliance of the Privy Council's observations on s 60 of the SCJA, the appellant contended that all his questions were *serious* questions of law on which his conviction for a grave offence depended, and accordingly they were questions of public interest. I have, in my written grounds of decision in Criminal Motion No 60 of 1989 [*Abdul Salam bin Mohamed Salleh v PP*], examined carefully the implications of their Lordships' observations on the meaning of s 60, and here I propose only to iterate my observation that the omission of their Lordships to elaborate on the nature of a grave offence, a criterion which is not expressly mentioned in the SCJA, leaves the issue at large and in some degree of uncertainty, although, as I have also stated, the offences which the Privy Council was referring to were grave in nature as they were Penal Code offences involving dishonesty and fraud and perjury and the punishments for which extended to fines and/or imprisonment. In the present application, the appellant is submitting that the offence on which he was convicted was a grave offence, but he was unable to assist the court in determining the essential elements of a grave offence in this context.

In my view, the offence in respect of which this application was made was not a grave offence. The appellant had merely provided public entertainment without a licence, an offence which is not seizable and for which the maximum punishment was a fine of \$5,000. The offence does not imply a lack of honesty or integrity or any of the qualities that make ordinary persons shun the company of such an offender. If the gravity of the offence were a prerequisite condition for the exercise of the court's power under s 60 of the SCJA, this application would have failed on this ground only.

The next point is whether the questions were questions of law which raised constitutional issues of freedom of speech and were therefore questions of public interest. In general, I agree with the proposition that any question which raised constitutional rights would be one of public

interest which ought to be decided, whenever appropriate, by the final appellate court in Singapore. However, I did not agree with the appellant that the questions in this application raised any constitutional issues. Question (1) as to whether the making of a speech to a gathering in a public place to which all members of the public have unrestricted access constituted public entertainment within the meaning of that expression in the Act was really a question of fact once it was determined as a matter of statutory construction that a speech made to such a gathering was an address. I held that it was as s 2 of the Act defined 'public entertainment' to include addresses. There was no doubt that the appellant 'addressed' the gathering. Accordingly, this question was substantially one of fact rather than of law, the question being whether the appellant did address the gathering.

Question (2)(i) assumed as a proven fact that the grounds for the refusal of the appellant's application for a licence under the Act were not within the grounds specified in the Constitution (art 14(2)). The fact was that the licensing officer did not give any reason at all for refusing the licence and the appellant had failed to request him to give his reasons which he was statutorily obliged to give if a request had been made. The appellant's attempt to elicit the reasons at the trial was stopped by the trial judge on the ground that the issue before him was whether or not the appellant had a licence under the Act when he addressed the gathering. Accordingly, there was no factual foundation on which this question of law could be raised, assuming it was one of public interest.

The same observations apply to question (2)(ii). There was no evidence that the licensing officer delegated his function to another person, and even if he had done so, it would clearly not raise a constitutional question but one of administrative law. The principle of *delegatus non potest delegare* is too well established and there is no public interest in referring it for decision by a higher court.

This leads me to question (3), which for the reasons I have given, also had no factual foundation for it to be raised. To that extent, it was a hypothetical question. Furthermore, I did not agree that question (2)(i) raised a constitutional issue. I have stated in my previous judgment that the appellant's failure to challenge (and in fact he conceded) the constitutional validity of the Act or the scheme of licensing prescribed thereunder meant that the Act was a law which Parliament was authorized by art 14(2) to enact for the purpose of imposing on the right to freedom of speech and expression conferred by art 14(1) such restrictions as it considered necessary or expedient for any of the purposes enumerated in that article. Article 14(1) is subject to art 14(2) and to the extent that a law is validly made under art (2), the right of free speech must be to the corresponding extent diminished. In other words, by reason of the Act, no person has a right to address a gathering in a public place except in accordance with the

provisions. On this basis, it must follow that the validity of any decision of the licensing officer made in the exercise of his powers in the implementation of the scheme of licensing was to be determined by well known administrative law principles of 'illegality, irrationality and procedural impropriety' (per Lord Diplock in *CCSU v Minister for the Civil Service*³). If the licensing officer's decision were held or declared null and void by a court on any of these grounds, it would merely result in the status quo ante, and the appellant would still not have a licence to provide public entertainment.

In the course of his submissions, the DPP advanced an argument that none of the questions of law raised in this application, assuming that they are proper questions of law, affected the course of the appeal as the court found as a fact that the appellant had never applied for a licence to provide public entertainment. The appellant's reply to this argument was that this fact was not considered as material by the prosecution in the court below or in the appeal before me. I believe that the real position could have been that the prosecution overlooked this fact as they were not aware that the ground floor and the first floor had different addresses and therefore constituted different 'places' for the purpose of the offence. The appellant also contended that as the court made this finding without giving him an opportunity to address the court on this point, it also raised a question of public interest as to whether or not the court was entitled to make such a finding. My answer to the appellant's complaint is that this finding of fact was not based on an evaluation of conflicting testimony on the issue, but on the basis of the appellant's own application form for a licence to provide public entertainment at the branch office of the Workers' Party which was, by his own admission, not the same place where he also admitted he had provided such entertainment. The circumstance that the appellant's attention was not directed to this fact did not make it any less a fact. In this application, the appellant had the opportunity to address me on why if I had given him the opportunity to address me earlier on the point, it would have made a difference to the conclusions of fact and of law that I had reached. He did not do so, other than to say that the prosecution did not rely on that fact as material to the charge. In my view, the materiality of this fact was not for the prosecution to decide but for the court.

However, even if I am wrong in making the said finding of fact against the appellant, it does not follow that the DPP's submission is sound. The appellant's appeal against his conviction was dismissed by me on the grounds (i) that the invalidity, even if established, of the licensing officer's refusal to issue a public entertainment licence would not have resulted in the appellant having committed no offence since he still had no licence, and, in any event, (ii) the appellant had applied for a licence to provide public entertainment at a place different from the

A place at which he actually provided such entertainment. The DPP's argument is that even if ground (i) were wrong, it would not have made any difference to the appeal as it would have been dismissed on ground (ii). I do not accept this argument. The fact was that ground (i) did affect the event of the appeal as the appeal was also dismissed on that ground. A prerequisite for the application of s 60 is that the determination of the question of law *has affected* the event of the appeal and *not* that such determination *would not have affected* the event of the appeal. Both the grounds I have given have affected the event of appeal. Accordingly, I do not accept the DPP's construction of the relevant words in s 60 of the SCJA.

C For the reasons I have given, I declined to reserve the appellant's questions of law for the decision of the Court of Criminal Appeal.

Application dismissed.

D Solicitors: JB Jeyaretnam & Co.

Reported by Azra Moiz

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